

## Internal Revenue Service

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## Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B02

PLR-111350-12

Date:

April 3, 2012

### Legend

X =

State =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Year 2 =

Trust 1 =

Tr1EINa =

Tr1EINb =

Trust 2 =

Tr2EINa =

Tr2EINb =

a =

b =

Dear :

This responds to a letter dated March 13, 2012, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting inadvertent termination relief pursuant to § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated in State on Date 1. X made an election to be treated as an S corporation effective Date 2. The parents of a and b (collectively, the Beneficiaries), acting on behalf of a and b pursuant to § 1.1361-1(j)(6)(i), made elections to treat Trust 1 and Trust 2 (collectively, the Trusts) respectively, as qualified subchapter S trusts (QSSTs) effective Date 2. The QSST elections for Trust 1 and Trust 2 were made using taxpayer identification numbers Tr1EINa and Tr2EINa, respectively.

On the first day of the year following Year 1, the Trusts ceased to qualify as QSSTs due to their failure to distribute all of their income (within the meaning of § 1.643(b)-1) to their respective beneficiaries in Year 1. In addition, in a year following Year 1, Trust 1 made certain payments for the benefit of a that may have satisfied legal support obligations of a's parents. Finally, in a year following Year 1, an action taken by a may have caused Trust 1 to cease to meet the QSST requirements. The failure of the Trusts to distribute income was discovered in Year 2, as were the other events that may have caused Trust 1 to cease to meet the QSST requirements. On a date prior to Date 3, Trust 2 distributed all of its previously undistributed income to b, and since that date has distributed all of its income currently to b.

X represents that a and b reported their allocable share of Trust 1 and Trust 2's income, respectively, on all affected returns consistent with the treatment of the Trusts as QSSTs. However, for Year 1 and subsequent tax years, Trust 1 and Trust 2 filed returns using taxpayer identification numbers Tr1EINb and Tr2EINb, respectively. X further represents that X filed as an S corporation for all years from and after Date 2. X represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for a taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1362(b) or to obtain shareholder consents, or (B) was terminated under paragraph (2) or (3) of § 1362(d); (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent; (3) no later than a reasonable period of time after

discovery of the event resulting in the effectiveness or termination, steps were taken (A) so that the corporation is a small business corporation, or (B) to acquire the required shareholder consents; and (4) the corporation and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to making such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that the termination of X's S corporation election on the first day of the year following Year 1 was inadvertent within the meaning of § 1362(f), as were the post-Year 1 actions of Trust 1 and a, which may have caused Trust 1 to not qualify as a QSST. We further hold that, pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation from Date 2 through Date 3, and thereafter, provided that X's S corporation election was valid, X's S election was not otherwise terminated under § 1362(d) other than as a result of the ownership of its stock by the Trusts, Trust 1 files an ESBT election effective Date 3 using Tr1EINb, pursuant to the procedures set forth in § 1.1361-1(m)(2), and Trust 2 files a QSST election effective Date 3 using Tr2EINb, pursuant to the procedures set forth in § 1.1361-1(j)(6), with the appropriate service center within 120 days of the date of this letter. A copy of this letter should be attached to the ESBT election and the QSST election.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. Pursuant to a power of attorney on file with this office, a copy of this letter is being forwarded to X's authorized representative.

Sincerely,

Bradford R. Poston  
Senior Counsel, Branch 2  
Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (4)

3 Copies of this letter

Copy for section 6110 purposes